IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5864 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HANSABEN KARSHANBHAI VALA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 5864 of 2001

MR CL SONI for Petitioners No. 1-3

MR VM PANCHOLI, APP, for Respondent No. 1

MR HARIN P RAVAL for Respondent No. 2

RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/12/2001

ORAL JUDGEMENT

1. The petitioners herein, by this petition under

Section 482 of the Code of Criminal Procedure, seek quashment of an F.I.R. lodged with Kodinar Police Station vide C.R. No.I-123 of 2001, against one Atu Hamir (non-petitioner), petitioner No.1 and petitioner No.3 for offences punishable under Section 406, 420 and 114 of Indian Penal Code.

2. The said F.I.R. is lodged by one Pratapbhai Hamirbhai Solanki of Kodinar. According to the complainant, survey No.4 of village Sarithiya of Kodinar taluka was originally owned by Hamirbhai Jivabhai which, ultimately, came to be mutated to the name of Atubhai Hamirbhai on demise of Hamirbhai Jivabhai, as the other heirs of Hamirbhai Jivabhai waived their right on the property. The said property was purchased by the complainant from Atubhai Hamirbhai by a document dated June 30, 2000, registered on July 1, 2000 and since then, the complainant is in possession of the said property. The said property was purchased for a consideration of Rs.1,90,000/-.

2.1 It is alleged in the complaint that despite this, Atubhai Hamirbhai, with the aid of petitioner No.1 and petitioner No.3 and with ulterior motive, has sold that very property to one Rameshkumar Thakarshibhai Raythattha by a sale deed of June 26, 2001. This has been done by Atubhai Hamirbhai and petitioners No.1 and 3 herein with a view to cause damage to the interest of the complainant and, therefore, they have committed offences punishable under Section 406, 420 and 114 of Indian Penal Code.

3. The petitioners herein seek quashment of this F.I.R. on the ground that they have no role to play in the transaction and that none of the offences alleged against them in the F.I.R. is constituted qua the petitioners even if the F.I.R. is taken at face value and, therefore, the petition may be allowed.

4. Learned advocate Mr. Soni appearing for the petitioners states that, although name of petitioner No.2 does not appear in the F.I.R., the investigating agency while investigating the case had arrested petitioner No.2 and produced him before the J.M.F.C. and, therefore, he is sought to be implicated in the said offence. Mr. Soni submitted that, all that the petitioners have done is that they have signed the subsequent document in favour of Rameshkumar Raythattha as attesting witnesses. The document is otherwise executed by the original land owner Atubhai Hamirbhai, who is not the petitioner herein. The petitioners seek quashment of the F.I.R. only qua them.

4.1 Mr. Soni submitted that prior to the sale deed in favour of the complainant, an agreement to sell was executed by Atubhai Hamirbhai in favour of petitioner No.1, but for some reason, that agreement to sell could not be carried further into a document of sale and, therefore, while executing the sale deed in favour of Rameshkumar Raythattha, she was asked to sign as an attesting witness, so that future litigation or complications may be avoided. Likewise, petitioner No.3-Najabhai was power of attorney holder of Atubhai Hamirbhai and other legal heirs of deceased Hamirbhai and in order that there may not be further complication, Najabhai was asked to sign the document in favour of Rameshkumar Rayttani as an attesting witness. In fact, the document is executed by Atubhai Hamirbhai. None of the petitioners have any interest in the property. Petitioner No.2 is only an attesting witness simpliciter. Mr. Soni submitted that the ingredients for constituting an offence of criminal breach of trust or cheating cannot be said to have been constituted qua the complainant and the present petitioners and, therefore, the petition may be allowed.

5. Learned advocate Mr. Raval submitted that here is a case where a systematic racket of cheating people by executing number of sale deeds is going on in areas where the lands are expensive. He submitted that, besides the present F.I.R., there is one more F.I.R. lodged by one Manishaben and others against petitioner No.3, who claims to be power of attorney holder of those complainants, who happens to be co-heirs of Atubhai Hamirbhai. He submitted that, at this initial stage, the F.I.R. may not be quashed at this infant stage. He submitted that the complainant is the owner of the property by a registered sale deed. Rameshkumar Raythattha may also claim to be a bona fide purchaser of the property by value by a subsequent sale deed and, therefore, the complainant may be put to jeopardy. The petition, therefore, may be dismissed.

6. Learned Additional Public Prosecutor, Mr. Pancholi, appearing for the State of Gujarat submitted that, at this initial stage of the investigation of the F.I.R., the F.I.R. may not be quashed. He has placed reliance on the decision of the Apex Court in Rajesh Bajaj v. State NCT of Delhi & Ors., AIR 1999 SC 1216 and submitted that the petition may be dismissed.

7. Having regard to the contentions raised before this Court, before proceeding to consider the merits, it

would be appropriate to note that, as per the settled propositions of law, while exercising powers under Section 482 of the Code of Criminal Procedure, the Court has to examine an F.I.R. or a complaint as it stands without adding or deducting anything and to ascertain whether an offence alleged in the F.I.R. or the complaint is constituted or not.

8. It would be recorded at the outset that there is no dispute about the factual aspects pointed out by Mr. Soni regarding role played by the petitioners in the transaction with Rameshkumar Raythattha.

9. Despite a close scrutiny, neither this Court nor the learned advocates for the respondents could point as to how an offence can be said to have been constituted qua the present petitioners and the complainant. The complainant asserts that he is the owner and he is in possession of the property in question. He has not entrusted any property or dominion over the property to the petitioners and question of misappropriation or conversion of that property to be used by the petitioners, therefore, does not survive. The offence under Section 405, therefore, cannot be said to have been constituted against the present petitioners.

9.1 Likewise, no averment in the F.I.R. is found to indicate that the petitioners by deceiving the complainant fraudulently or dishonestly induced the complainant to deliver any property to any person or consented that any person may retain that property and that, because of that inducement, the complainant either delivered a property or consented the retention of any property by any person. The allegation made in the F.I.R. is only to the effect that Atubhai Hamirbhai (non-petitioner), despite knowing that property is sold by him to the complainant by a registered sale deed and the possession of the property is with the complainant, has sold the property to Rameshbhai Raythattha by another sale deed and that the petitioners No.1 and 3 have conspired with Atubhai Hamirbhai. Barring this bald allegation, there is nothing to indicate either conspiracy or aiding or abetting the offences that are alleged. The factual aspect uncontroverted and undisputed is that the petitioners are only attesting witnesses to the second document.

10. The F.I.R., therefore, does not indicate commission of the offence alleged in the complaint against the petitioners. The petition, therefore, deserves to be quashed.

11. However, this Court may hasten to add that there is some substance in the contention raised by the respondents that the F.I.R. is under investigation and, at this stage, it may not be quashed. It is clarified that the entire F.I.R. is not quashed by this order. The F.I.R. stands quashed against the petitioners only. It is also clarified that quashment is in respect of the offences alleged to have been committed by the petitioners in the F.I.R. It would be open for the investigating agency to investigate into the matter and to take appropriate action, if during the course of investigation some other offence is found to have been committed by the petitioners.

12. Though not significant or relevant, the apprehension of claim by Rameshkumar Raythattha about his being bona fide purchaser of property for value cannot be accepted as that cannot have any bearing on the F.I.R. or present petition.

13. With the above observation, the petition stands allowed. The F.I.R. being C.R.-I No.123 of 2001 of Kodinar Police Station stands quashed only against the petitioners for the offences charged against them. Rule is made absolute.

[A.L. DAVE, J.]

gt